IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:	)	
	)	**Chapter 11**
CITATION CORPORATION, et al.,[1]	)	
	)	**Case No. ___________________**
Debtors.	)	

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) FOR AUTHORIZATION TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL TRADE VENDORS

COME NOW, Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), and, pursuant to §§ 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), move this Court (this "Motion") to authorize the payment of prepetition claims of certain critical trade vendors. In support of this Motion, the Debtors rely on the Affidavit of Larry Tackett, Vice-President of Supply Management for Citation Corporation and the Affidavit of Charles P. Bloome in Support of

[1] In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries, Ltd., and (xxiii) MFC Liquidating Company, Ltd.

Chapter 11 Petitions and First Day Orders, each filed contemporaneously herewith, and state as follows:

JURISDICTION AND VENUE

1. On September 18, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108. The Debtors have moved this Court for joint administration of these chapter 11 cases.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b).

FACTUAL BACKGROUND

3. Facing its biggest challenges of all -- a sluggish industry and skyrocketing materials costs -- Citation and its affiliated companies have filed for chapter 11 bankruptcy in the U.S. Bankruptcy Court in Birmingham, Alabama. This action was taken to reorganize Citation's businesses into a profitable company that will continue to serve its customers. The Citation companies continue to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

4. Since its inception in 1974, Citation has forged a name for itself within the metal components industry by focusing on one overriding goal: total customer satisfaction. Citation has done this by acquiring capable leadership, loyal production workers and responsive suppliers.

5. Like every action Citation has taken over the years, chapter 11 was undertaken with customers in mind. The company is confident that a court-guided reorganization will give Citation the breathing room it needs to improve cash flow and emerge as a profitable company serving its many customers. The Citation companies will continue to use sound management practices to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

6. Citation is a privately held Delaware corporation headquartered in the Birmingham, Alabama metropolitan area. Through its wholly-owned subsidiaries, Citation designs, develops and manufactures high quality cast, forged, and machined components for the capital and durable goods industries. The products Citation manufactures are made primarily from iron, steel and aluminum materials. Citation's attention to quality, delivery and cost have allowed it to grow its customer base over the years. The company has also grown its business through a series of acquisitions. The Citation companies now own and operate sixteen facilities located in Alabama, Indiana, Wisconsin, Michigan, Illinois, Texas, and North Carolina. The Citation companies employ approximately 5,100 employees, some of whom are unionized.

7. Citation manufactures products for several market segments including the automotive, heavy truck, construction, aerospace, agricultural and commercial industries. Citation produces aluminum and iron castings. Its steel forgings are used in a wide variety of applications including braking, steering, engine and drive train parts for passenger cars and light trucks; suspension and transmission parts for heavy trucks; ground engaging tools for construction equipment; parts for aircraft engines, landing gear and structural airframes; and thousands of other critical parts for capital and durable goods. Citation sells its castings and

forgings to customers throughout the United States. Several of its largest customers are very large tier-one suppliers who make, assemble, and supply parts to automobile manufacturers.

8. Through the 1990s, Citation was a publicly traded company. In December 1999, Citation was taken private by an investment firm based in New York. A fund managed by the same firm continues to own virtually all of the shares of Citation's parent corporation.

9. Citation's cash flow challenges are typical of the industry today. All purchasers of steel have been suffering from the onslaught of record steel price increases. In the last 18 months, the price of steel scrap escalated from its traditional price of $150 per ton to more than $400 per ton. Other raw materials prices have also suffered dramatic price increases.

10. Ductile products account for half of Citation's sales. Steel scrap is the primary raw material used to make ductile products. Due to the unprecedented and unexpected price escalations for the purchase of steel scrap, Citation has found it difficult to maintain sufficient operating capital. Although some of Citation's customer relationships include provisions for sharing cost increases for steel scrap, Citation's relationships with several of its largest customers have no such provisions. Although Citation continues to work with customers to maintain positive, mutually beneficial relationships, Citation to date has been forced to bear the full burden of the increased price of steel scrap in many of its relationships. Citation's aluminum and other divisions have fared better, largely due to their ability to pass on the raw materials price increases.

11. In addition to the escalating price of steel scrap, Citation -- like numerous U.S. companies that provide employees with healthcare benefits -- has incurred heavy increases in the cost of health care for Citation's employees. This and an increase in the cost of utilities has further hampered Citation's cash flow.

12. Citation has a strong market share of the North American ductile iron parts industry, competing primarily with North American companies only. This is because the weight, size, and shapes of the materials and product and heavy industry's requirements for just-in-time or staged delivery generally require the ductile iron foundries to be located on the same continent as the customers. Nonetheless, there is foreign competition, primarily from China and India.

13. The entire North American ductile iron parts industry finds itself in the same predicament as Citation. Some companies have recently exited this business altogether while a few competitors are better capitalized. Citation is determined to stay in business and to continue serving the customers, employees and suppliers who have come to rely on Citation as a partner in success. Citation's management sees chapter 11 as a positive step to better position itself until the price of steel and other raw materials can reach an equilibrium within the industry and the true cost of materials can be passed through to the end user of the product.

14. As already mentioned, one of the most significant costs to Citation has been the unprecedented increase in the price of steel scrap. Combined with Citation's debt load, this has resulted in a shortage of cash flow. For the fiscal year ended September 28, 2003, Citation and its subsidiaries reported net sales of approximately $640,000,000 and a net loss of approximately $120,000,000.

15. Citation and its subsidiaries are indebted on a bank debt facility in the approximate amount of $325,000,000. This indebtedness is secured by a first lien on virtually all of the Debtors' assets. Citation's parent corporation is separately indebted on a different debt facility to a different set of creditors in the approximate amount of $140,000,000. Citation generally has trade debt of approximately $60,000,000.

16. Citation is owed receivables from its customers that generally total around $90,000,000. Citation maintains inventory that has a book value of approximately $45,000,000. Citation owns property, plants, and equipment of substantial value. Its greatest assets, however, are Citation's strong customer base and its many loyal employees.

17. As a part of its ongoing strategic review and assessment of their financial condition, Citation has determined to take advantage of its strong market share position, to strengthen the balance sheet, and to operate successfully in today's competitive environment, it must reduce its existing debt burden and increase operating efficiencies. Citation seeks protection under chapter 11 of the Bankruptcy Code to provide the necessary time to stabilize its finances and to develop and to implement a strategic plan to return its business to sustained profitability.

18. Citation filed bankruptcy with four primary goals in mind: (a) to reshape the Debtors' capital structure; (b) to improve cost efficiencies; (c) to maintain product manufacture and delivery; and (d) to negotiate with its key customers to pass on raw materials price increases. During its stay as a debtor-in-possession in chapter 11, Citation will continue to serve its customers by manufacturing high quality products at Citation's many locations throughout the United States. Once these four key goals are sufficiently met by the bankruptcy proceedings, Citation will emerge from this process as a strong, viable, and independent business positioned for increased competitiveness and sustained profitability.

RELIEF REQUESTED

19. By this Motion, the Debtors seek entry of an order authorizing, but not requiring, them to pay, in the Debtors' sole discretion through reasonable exercise of their business judgment (subject to the conditions of the Debtors' post-petition financing arrangements), the prepetition claims of certain critical vendors that are essential to the uninterrupted functioning of

the Debtors' business operations (the "Critical Vendors," whose prepetition claims shall be identified as the "Critical Vendor Claims"), which shall not exceed $20 million in the aggregate.

20. The Debtors seek authorization for the applicable banks and financial institutions to process, honor and pay any and all checks on account of pre-petition Critical Vendor Claims and to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

CRITERIA FOR CRITICAL VENDORS

21. The Debtors' seek Critical Vendor status only for those vendors: (1) whose continued business is needed for the Debtors' successful reorganization; (2) that would cease dealing with the Debtors but for immediate payment of some or all of their prepetition claim; and (3) that would benefit the Debtors enough from the continued transactions that some residual benefit would be imparted to the remaining creditors or would at least leave them no worse off. *In re Kmart Corporation*, 2004 WL 343520 (7th Cir. February 24, 2004).

22. Additionally, Critical Vendor status will only be imparted to those vendors where: (1) "the debtor's failure to deal with the creditor creates a risk of harm or loss of economic advantage to the debtor's estate that is disproportionate to the creditor's prepetition claim" and (2) "there is no practical or legal alternative by which the debtor can cause the creditor to deal with it other than by payment of the prepetition claim." *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003).

23. In light of the fact that the Debtors only seek to impart Critical Vendor status on those vendors that are capable of ceasing to do business with the Debtors and that would cease doing business but for their status as Critical Vendors, the Debtors do not seek to impart this

status on any vendors that are party to an executory contract with the Debtors. *Id.* Under the same rationale, to the best of their knowledge, the Debtors do not seek to impart Critical Vendor status on any vendor for whom the Debtors account for 50% or more of the vendors' business. *Id.*

24. Moreover, a variety of vendors have not been deemed Critical Vendors due to the sheer fact that the Debtors believe that they will continue to do business with the Debtors post-petition despite not having their pre-petition claims paid. For example, a variety of vendors supply the Debtors with purchased components that are required parts of the Debtors products. However, while these purchased components are required for the production of some items and they can only be purchased from the pre-petition suppliers of these components, the Debtors believe that these suppliers will continue to do business with the Debtors post-petition despite the failure to pay their pre-petition claims. Accordingly, these vendors have not been deemed Critical Vendors.

CRITICAL VENDORS

25. Each category of claims that the Debtors seek authority to pay pursuant to this Motion and the justifications for paying such claims are described in detail below.[2] However, all of the suppliers that fall within these categories are not Critical Vendors. Only those vendors within these categories that meet the criteria outlined above have been deemed Critical Vendors

(a) **Raw Materials:**

[2] Contemporaneously herewith, the Debtors have filed a motion wherein the Debtors seek to file a list of the Critical Vendors subject to a protective order. The rationale behind the filing of this list subject to a protective order is set forth in the motion.

(i) There are a variety of raw materials, including steel, green sand, and aluminum, which are critical to the continued and uninterrupted functioning of the Debtors' businesses.

(ii) Most of the Debtors' raw materials needs are filled by a few vendors. These vendors dominate the industry and the ability of the Debtors to obtain a continuous supply of these raw materials would be seriously jeopardized if these vendors were to interrupt service. Even where there are alternate suppliers available for certain raw materials, it is infeasible for the Debtors to utilize these suppliers as they lack the capacity to meet the Debtors' raw materials needs and these alternate suppliers would be unable to begin supplying the Debtors in a reasonable time and on terms as beneficial to the Debtors as those already in place. At some production facilities, there is only a three to four day supply of certain raw materials. Accordingly, even a temporary disruption in the Debtors' manufacturing operations would result in the Debtors' failure to meet their supply commitments to customers and, thus, may irreparably damage the Debtors' critical customer relationships. In the event that the Debtors' supply is interrupted, it would likely bring a halt to operations at one or more facilities. Such a shutdown would cause immeasurable damage to the Debtors' operations.

(iii) For example, in the case of scrap steel, there are only a limited number of suppliers in the United States. Moreover, these suppliers are fairly regionalized and typically only supply customers in their region. If the Debtors failed to continue working with their current suppliers, no other scrap steel suppliers would be able to supply the Debtors' needs due to restrictions on geography and capacity.

(b) **Service Suppliers:**

(i) The Debtors utilize several critical service suppliers including, but not limited to, (a) providers of information technology services, (b) suppliers who assist the Debtors in maintaining compliance with environmental regulations, (c) regulatory compliance specialists, (d) companies that manage the Debtors' common carrier usage, and (e) third party sales agents, whose continued employment is critical to the continued operations of the Debtors.

(ii) All of the service suppliers deemed critical provide specialized services to the Debtors. The critical service suppliers have invaluable expertise and institutional knowledge of the Debtors that has been developed by the critical service suppliers via their service to the Debtors. This expertise and institutional knowledge cannot be replicated, and accordingly, the Debtors have no readily available substitute vendors to provide these services.

(iii) For example, the Debtors would be unable to locate third party sales agents with the necessary qualifications, experience and knowledge of the Debtors' businesses such that they could market it to potential customers. These sales agents have built up relationships with the Debtors' customers such that if they were cut off, the Debtors' relationships with their customers may be severely harmed.

(iv) The Debtors also employ several regulatory compliance specialists that assist the Debtors in complying with environmental and governmental laws and regulations. For example, the Debtors employ certain hazardous waste disposal companies that remove a variety of hazardous substances from the Debtors' facilities for proper disposal. If the claims of these service providers are not paid, the Debtors believe that certain of these service providers may refuse to perform postpetition services for the Debtors or may delay performance for a period of time. Any disruption in the availability of these services could result in the Debtors' noncompliance with government regulations or laws. Any such potential violation of law or regulation could cause the applicable governmental entity to attempt to levy significant fines against the Debtors postpetition or seek to enjoin the Debtors' operations.[3] Because the Debtors must comply with applicable government laws and regulations on a postpetition basis and cannot afford the potentially irreparable damages to their business that would be caused by adverse governmental action for regulatory noncompliance, the Debtors believe that their ability to pay the pre-petition claims of certain regulatory compliance specialists is essential to their reorganization efforts.

(v) Moreover, in some instances, there are only a few service suppliers that provide the types of services needed for the continued operations of the Debtors' businesses. The termination of these relationships would likewise cause significant harm to the Debtors. For example, there are only a few sand removal specialists who can remove the sand from the Debtors facilities at a reasonable price. This is because some sand removal companies are able to sell this sand to third parties (as opposed to merely dumping the sand in landfills) thereby reducing the costs.

(c) **<u>Maintenance and Repair Supplies:</u>**

(i) The Debtors are required to purchase a variety of maintenance items, including repair and replacement parts for use in equipment, that are essential to the Debtors' operations.

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[3] Section 362(b)(4) of the Bankruptcy Code exempts from the automatic stay certain actions by government units to enforce their police and regulatory powers for the protection of public health and safety, potentially including the enforcement of appropriate injunctions to remedy noncompliance with government laws or regulations. Accordingly, the automatic stay may not protect the Debtors against adverse government actions. The Debtors expressly reserve their rights with respect to actions by governmental units to enforce their police and regulatory powers for the protection of public health and safety, potentially including the enforcement of appropriate injunctions to remedy noncompliance with government laws or regulations.

(ii) The Critical Vendors that supply the Debtors with repair and replacement parts for their machinery are typically the only manufacturers that supply the needed parts. Frequently, this results from the fact that there may only be a sole supplier of a particular type of equipment utilized by the Debtors. Accordingly, when that piece of equipment needs replacement parts, those parts may only be obtained by the original equipment supplier. In some instances, the repair and replacement parts are patented by the supplier, thereby ensuring that they are the single source supplier of those items.

(iii) If the Debtors were unable to obtain the repair and replacement parts needed for their equipment, it could result in a halt of production at the Debtors' facilities, which would result in significant cost to the Debtors.

(d) **<u>Tooling:</u>**

(i) The Debtors must purchase a variety of equipment and tooling needed for the operation of their production facilities.

(ii) Some of the tooling needed by the Debtors is available only from a limited number of suppliers or is custom made for the Debtors. As the Debtors are engaged in a very specialized business, there is likewise a limited number of specialized suppliers who can supply the Debtors with tooling. If the Debtors were unable to utilize certain tooling suppliers, there would be no alternate suppliers available to supply the Debtors with tooling needed to continue production at their facilities. Even if the tooling could be obtained from other suppliers, those suppliers would be unable to supply the Debtors within a reasonable time and/or on as beneficial terms as those provided by their current tooling suppliers.

(iii) Should the Debtors be unable to obtain tooling from the Critical Vendors, it would likely result in an inability to continue production operations thereby leading to a costly shutdown of the Debtors' production facilities.

26. Some of the Critical Vendors, throughout the categories listed above, also may have lien rights or may develop lien rights, such as mechanics' liens, materialmens' liens, common carrier liens, possessory liens or other similar State law trade liens ("Trade Liens") on the Debtors' assets, based upon the Critical Vendor Claims held by such vendors. The failure to pay these lienholders would cause serious damage to the Debtors as these potential lienholders may be able to retain property needed by the Debtors to operate their businesses effectively if the Debtors fail to pay these lienholders' prepetition claims.

PROPOSED TERMS AND CONDITIONS OF PAYMENT OF CRITICAL VENDOR CLAIMS

27. The Debtors hereby request authorization to pay all, a portion, or none of the Critical Vendor Claims as determined by the Debtors in their sole discretion (subject to the conditions of the Debtors' postpetition financing arrangements) to continue receiving the vital goods and services provided by the Critical Vendors; provided that payments in respect of Critical Vendor Claims shall not exceed $20 million in the aggregate. The Debtors propose to condition the payment of Critical Vendor Claims on the agreement of individual Critical Vendors to continue supplying goods and services to the Debtors on the trade terms that such Critical Vendor provided goods and/or services to the Debtors on trade practices and programs that are as favorable or more favorable to the Debtors, depending on the circumstances, as those in effect prepetition. The Debtors reserve the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim. The Debtors intend to disclose

such payments in their monthly operating report, including a description of the payments made and the reason for each payment.

28. To implement the terms of the authority requested by the Motion and to ensure that Critical Vendors deal with the Debtors on the trade terms as provided for in this motion, the Debtors propose that as a condition to paying any Critical Vendor: (a) that a letter, substantially in the form attached hereto as Exhibit "A," be sent to the Critical Vendors along with a copy of the Order granting the Motion and that the letter be executed by the Critical Vendor and returned to the Debtors; and (b) that the check used to pay the holder of a Critical Vendor's claim contain a legend substantially in the following form:

> By accepting this check, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the Northern District of Alabama, dated ______, 2004, in the Company's Chapter 11 Consolidated Case (Case No _______), entitled "Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Authorizing Payment of Prepetition Claims of Certain Critical Trade Vendors" and submits to the jurisdiction of that Court for enforcement thereof.

29. Nothing in this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of a Critical Vendor under applicable nonbankruptcy law.

30. If a Critical Vendor refuses to supply goods and/or services to the Debtors on the trade terms as provided for in this Motion following receipt of payment on its Critical Vendor Claim, the Debtors seek authority to, in their discretion and without further order of the Court, declare that provisional payments made to Critical Vendors on account of Critical Vendor Claims be deemed to have been in payment of then outstanding postpetition claims of such vendors without further order of the Court or action by any person or entity. In the event that such occurs, a Critical Vendor shall then immediately repay to the Debtors any payment made to it on account of its Critical Vendor Claims to the extent that payments on account of such Critical Vendor Claims exceed the postpetition claims of such vendors then outstanding without

giving effect to any rights of setoff, claims, provision for payment of reclamation or trust find claims, or otherwise. In sum, the Debtors seek to return the parties to their position immediately prior to the entry of the Order approving this Motion with respect to all prepetition claims in the event a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms following receipt of payment on its Critical Vendor Claim.

31. However, those Critical Vendors that have any Trade Liens on the Debtors' assets need not comply with any of the terms and conditions set forth in this Motion, except for those in this paragraph. The Critical Vendor Claim of any Critical Vendor who asserts or who may assert a Trade Lien on the Debtors' property may be paid immediately in exchange for such Critical Vendor (i) agreeing, to the extent such Critical Vendor has not previously perfected its interest in the Debtors' property, to forbear from pursuing perfection; (ii) releasing the Trade Lien; and (iii) releasing, to the extent such Critical Vendor is in possession of the Debtors' property, the Debtors' property; provided that payments in respect of Critical Vendor Claims made to Critical Vendors who assert or who may asserts Trade Liens shall not exceed $1 million in the aggregate (which limit is included in the $20 million aggregate limit for all Critical Vendor Claims). To the extent that any payment of a Critical Vendor Claim of a Critical Vendor who asserts or who may assert a Trade Lien is made that would exceed the $1 million aggregate limit, such Critical Vendor must comply with all terms and conditions set forth in this Motion.

PAYMENT OF THE CRITICAL VENDOR CLAIMS IS NECESSARY FOR THE DEBTORS' SUCCESSFUL REORGANIZATIONS IN THESE CHAPTER 11 CASES

32. The Debtors believe that payment of the Critical Vendor Claims is necessary to effect successful reorganizations in these Chapter 11 cases. If this Motion is not granted, the Critical Vendors are likely to discontinue providing goods and services to the Debtors on trade terms that are at least as favorable as those used prepetition, effectively reducing the amount of

credit available to the Debtors. Moreover, the Debtors believe that certain of the Critical Vendors might cease dealing with the Debtors altogether, resulting in the Debtors' inability to obtain certain essential goods and services and forcing the Debtors to incur higher costs. As detailed further below, such actions would be harmful, if not devastating, to the Debtors, their estates, and creditors.

33. The continued availability of trade credit in amounts and on terms that are as favorable or more favorable, depending on the circumstances, with those enjoyed by the Debtors prepetition is clearly of benefit to the Debtors in that it will permit them to maintain liquidity for business operations. The Debtors believe that preserving working capital through the retention or reinstatement of traditional trade credit terms will enable the Debtors to maintain their competitiveness and maximize the value of their businesses for the benefit of the Debtors, their estates, and creditors. Conversely, a deterioration of trade credit and a disruption or cancellation in the delivery of goods or provision of services, many of which are not readily replaceable, would cripple the Debtors' business operations, increase the amount of funding needed by the Debtors postpetition, and ultimately hamper the Debtors' ability to service their customers, whose continued loyalty is vital to the successful reorganizations of the Debtors' businesses.

34. In addition, the relief requested herein, if granted, will likely avert the filing of countless reclamation claims, suits, liens, and motions by claimants seeking payment of or priority for their claims on a variety of grounds. Avoiding the time, distraction, and considerable expense of litigating the merits of such claims will benefit the Debtors, their estates, and creditors while facilitating the administration of these cases.

35. Section 105(a) of the Bankruptcy Code provides as follows:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

> No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). This section provides bankruptcy courts with broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory or equitable common law principles.

36. The purpose of Bankruptcy Code § 105(a) is to "assure the Bankruptcy Court's power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." 2 *Collier on Bankruptcy* ¶ 105.01, at 105-3 (15th ed. 1996). Thus, Bankruptcy Code § 105(a) essentially codifies the bankruptcy court's inherent equitable powers. *See Management Technology Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D. N.J. 1985) (court's equitable power derived from Bankruptcy Code § 105).

37. Numerous courts have used their Bankruptcy Code § 105(a) equitable powers under the "necessity of payment" doctrine to authorize payment of a debtor's prepetition obligations where, as here, such payment is necessary to effectuate the "paramount purpose" of chapter 11 reorganization, which is to prevent the debtor from going into liquidation and to preserve the debtor's potential for rehabilitation. The "necessity of payment" doctrine stands for the proposition that a bankruptcy court may allow pre-plan payments of pre-petition obligations where such payments are critical to the debtor's reorganization." *In re Financial News Network, Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D. N.Y. 1991). *See also In re UNR Industries, Inc.*, 143 B.R, 506, 519-20 (Bankr. N.D. Ill. 1992) *rev'd on other grounds*; *In re UNR Industries, Inc.*, 173 B.R. 149, 158-59 (Bankr. N.D. Ill. 1994); *In re Lehigh & N.E. Ry, Co.*, 657 F.2d 570, 581 (3d

Cir. 1981); *In re Ionosphere Clubs Inc.*, 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989) (citing *NLRB v. Bildisco & Bildisco*, 465 US 513, 528 (1984)).[4]

38. This doctrine also has been invoked if nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor's business reorganization plan. *See UNR Industries*, 143 B.R. at 520 ("Necessity Doctrine may be used to permit a debtor to pay pre-petition claims of suppliers or employees whose continued cooperation is essential to the debtor's successful reorganization"); *Ionosphere Clubs*, 98 B.R. at 176-77 (Bankruptcy Code § 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor); *see also In re James A. Phillips, Inc.*, 29 BR. 391, 394-95 (S.D. N.Y. 1983).

39. In the case of *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that "a bankruptcy court may exercise its equity powers under [Bankruptcy Code] § 105(a) to authorize payment of pre-petition claims where such payment is necessary 'to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'"

40. As noted above, the Critical Vendors supply goods and services to the Debtors that either cannot be readily replaced or are provided on terms such that the Debtors would be forced to incur higher costs to obtain comparable goods and services elsewhere, depleting the Debtors' operating cash at a time when liquidity is most critical to the Debtors. Granting the relief requested herein will enable the Debtors to demonstrate to their customers that they have effected a smooth transition to operations in a chapter 11 environment.

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[4] This doctrine, first articulated by the United States Supreme Court in *Miltenberger v. Logansport Rv. Co.* 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

41. This Court has authorized payments to vital suppliers and trade creditors under similar circumstances. *See, e.g.*, *In re Décor Grauvre Corp.*, Case No. 02-00895-TOM (Bankr. N.D. Ala. Feb. 6, 2002); *In re Globe Manufacturing Corp.*, Case No. 01-70115-CMS (Bankr. N.D. Ala. January 30, 2001); *In re Hal Roach Construction, Inc.*, Case No. 00-03118-TBB (Bankr. N.D Ala. May 24, 2000); *In re Gulf States Steel Inc. of Alabama*, Case No. 99-41958-JSS (Bankr. N.D. Ala. July 7, 1999). Moreover, courts in other districts have granted similar relief in other cases. *See, e.g.*, *In re AI Realty Marketing of New York*, Case No. 01-40252 through 01-40290 (Bankr. S.D. N.Y. February 6, 2001); *In re LTV Steel Company, Inc.*, Case No. 00-43866 (Bankr. N.D. Oh. Dec. 29, 2000); *In re Trans World Airlines, Inc.* Case No. 95-43748 (Bankr. E.D. Mo. June 30, 1995); *In re Continental Airlines*, 90-932 (Bankr. D. Del. Dec. 27, 1990).

42. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and all parties in interest.

NOTICE AND PRIOR MOTIONS

43. Notice of this Motion has been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of the Internal Revenue Service for the Northern District of Alabama. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

44. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors request this Court enter an order substantially similar to the one attached hereto as Exhibit "B," granting Debtors (a) authorization to pay the Critical Vendor Claims, subject to the availability as may be permitted pursuant to the Debtors' postpetition financing agreement, but not to exceed $20 million in the aggregate and (b) such other and further relief as is just and proper.

Dated: September 18, 2004.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:	)	
	)	**Chapter 11**
CITATION CORPORATION, et al.,[1]	)	
	)	**Case No. ________________**
Debtors.	)	

AFFIDAVIT OF LARRY TACKETT

STATE OF Alabama)
)
COUNTY OF Shelby)

Before me the undersigned Notary, personally appeared Larry Tackett, who being known to me and being by me first duly sworn, deposes and says as follows:

1. My name is Larry Tackett. I am over the age of twenty one (21) and competent to testify regarding the matters contained herein.

2. I submit this affidavit in support of the Motion of the Debtors' Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authorization to Pay Prepetition Claims of Certain Critical Trade Vendors and the Motion Authorizing Debtors to File Critical Vendor List Under Seal

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[1] In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries Ltd., and (xxiii) MFC Liquidating Company, Ltd.

Pursuant to 11 U.S.C. § 107(b) filed with the Court contemporaneously herewith. Except as otherwise indicated, all facts set forth in this affidavit are based upon my personal knowledge, my review of relevant documents, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and financial affairs. If I were called upon to testify I would testify competently to the facts set forth in this affidavit. I am authorized to submit this affidavit.

3. I am the Vice-President of Supply Management for Citation Corporation. I have held this position since 2002. Prior to holding this position, I held purchasing or supply positions at several other companies, including Lear Corporation where I was the Commodity Manager in charge of $1.5 billion in purchasing.

4. As Vice-President of Supply Management, I am responsible for purchasing all materials for the Debtors and managing the Debtors' supply of materials. Moreover, I am one of the persons who has custody and control of the Debtors' business records regarding the Debtors and these chapter 11 cases. These records were made at or near the time of the event recorded by a person (or persons) with knowledge of the event and charged with the responsibility for recording such events. These records are kept in the ordinary course of the Debtors' regularly conducted business activities, which is the customary practice. I have reviewed the Debtors' records regarding the Debtors and these chapter 11 cases, which leads me to the summary set forth herein. All facts and procedures set forth herein are either (a) facts or procedures of which I have personal knowledge upon information and belief or (b) an accurate summary of the Debtors' records kept in the ordinary course of business that were reviewed by me or other employees of the Debtors' under my supervision and direction.

5. The Debtors utilize a variety of vendors whose post-petition supply is critical to the effective functioning of the Debtors' operations (the "Critical Vendors"). The Debtors seek authorization to pay the prepetition claims of these Critical Vendors in order to effectuate an effective reorganization.

PROCESS FOR DETERMINING CRITICAL VENDORS

6. In order to determine which of the Debtors vendors are Critical Vendors, Citation's supply management department evaluated each individual vendor to determine their status. After making an initial determination of the vendors' status, the purchasing department went back through the Critical Vendors several more times to eliminate all vendors except those that met the criteria for Critical Vendors as outlined below.

7. The supply management department at each individual Debtor evaluated the vendors to determine whether or not they are Critical Vendors. If the individual Debtor's supply management department determined that any other vendors should be deemed Critical Vendors, the department was required to demonstrate that the particular vendor met the criteria for being a Critical Vendor.

CRITERIA FOR CRITICAL VENDORS

8. Only those trade vendors and service suppliers that I believe will decline to continue supplying goods to the Debtors after the filing of their bankruptcy petitions unless their prepetition claims are paid were deemed to be Critical Vendors.

9. Those trade vendors and service suppliers that I believe might continue to do business with the Debtors after the filing of their bankruptcy petitions were not deemed to be

Critical Vendors. For example, a variety of vendors supply the Debtors with purchased components that are required parts of the Debtors products. However, while these purchased components are required for the production of some items and they can only be purchased from the pre-petition suppliers of these components, I feel that these suppliers will continue to do business with the Debtors post-petition despite the failure to pay their pre-petition claims. Accordingly, these vendors have not been deemed Critical Vendors.

10. Moreover, only vendors that were critical to the effective functioning of the Debtors' operations and would assist the Debtors in an effective reorganization of their businesses were deemed to be Critical Vendors. In the event some other vendor could supply a product, on a timely basis, that was critical to the Debtors' operations, the current vendor was not deemed to be a Critical Vendor.

11. While it is impossible to know for sure in many instances, to the best of my knowledge, the Debtors do not account for 50% or more of the business of any of the Critical Vendors.

12. Only suppliers with whom the Debtors do not have an executory contract have been deemed Critical Vendors.

TYPES OF CRITICAL VENDORS AND BASIS FOR STATUS

13. The suppliers who are critical to Debtors' operations can be divided into four overarching categories: (i) raw materials suppliers; (ii) service suppliers; (iii) maintenance and repair suppliers; and (iv) tooling suppliers. All of the suppliers that fall within these categories are not Critical Vendors. Only those vendors within these categories that meet the criteria outlined above have been deemed Critical Vendors.

A. Raw Materials

14. There are a variety of raw materials, including steel, green sand, and aluminum, which are critical to the continued and uninterrupted functioning of the Debtors' businesses.

15. Most of the Debtors' raw materials needs are filled by a few vendors. These vendors dominate the industry and the ability of the Debtors to obtain a continuous supply of these raw materials would be seriously jeopardized if these vendors were to interrupt service. Even where there are alternate suppliers available for certain raw materials, it is infeasible for the Debtors to utilize these suppliers as they lack the capacity to meet the Debtors' raw materials needs and these alternate suppliers would be unable to begin supplying the Debtors in a reasonable time and on terms as beneficial to the Debtors as those already in place. At some production facilities, there is only a three to four day supply of certain raw materials. Accordingly, even a temporary disruption in the Debtors' manufacturing operations would result in the Debtors' failure to meet their supply commitments to customers and, thus, may irreparably damage the Debtors' critical customer relationships. In the event that the Debtors' supply is interrupted, it would likely bring a halt to operations at one or more facilities. Such a shutdown would cause immeasurable damage to the Debtors' operations.

16. For example, in the case of scrap steel, there are only a limited number of suppliers in the United States. Moreover, these suppliers are fairly regionalized and typically only supply customers in their region. If the Debtors failed to continue working with their current suppliers, no other scrap steel suppliers would be able to supply the Debtors' needs due to restrictions on geography and capacity.

B. <u>Service Suppliers</u>

17. The Debtors utilize several critical service suppliers including, but not limited to, (a) providers of information technology services, (b) suppliers who assist the Debtors in maintaining compliance with environmental regulations, (c) regulatory compliance specialists, (d) companies that manage the Debtors' common carrier usage, and (f) third party sales agents, whose continued employment is critical to the continued operations of the Debtors.

18. All of the service suppliers deemed critical provide specialized services to the Debtors. The critical service suppliers have invaluable expertise and institutional knowledge of the Debtors that has been developed by the critical service suppliers via their service to the Debtors. This expertise and institutional knowledge cannot be replicated, and accordingly, the Debtors have no readily available substitute vendors to provide these services.

19. For example, the Debtors would be unable to locate third party sales agents with the necessary qualifications, experience and knowledge of the Debtors' businesses such that they could market it to potential customers. These sales agents have built up relationships with the Debtors' customers such that if they were cut off, the Debtors' relationships with their customers may be severely harmed.

20. The Debtors also employ several regulatory compliance specialists that assist the Debtors in complying with environmental and governmental laws and regulations. For example, the Debtors employ certain hazardous waste disposal companies that remove a variety of hazardous substances from the Debtors' facilities for proper disposal. If the claims of these service providers are not paid, the Debtors believe that certain of these service providers may refuse to perform postpetition services for the Debtors or may delay performance for a period of time. Any disruption in the availability of these services could result in the Debtors'

noncompliance with government regulations or laws. Any such potential violation of law or regulation could cause the applicable governmental entity to attempt to levy significant fines against the Debtors or seek to enjoin the Debtors' operations. Because the Debtors must continue to comply with applicable government laws and regulations and cannot afford the potentially irreparable damages to their business that would be caused by adverse governmental action for regulatory noncompliance, the Debtors ability to pay the pre-petition claims of certain regulatory compliance specialists is essential to their reorganization efforts.

21. Moreover, in some instances, there are only a few service suppliers that provide the types of services needed for the continued operations of the Debtors' businesses. The termination of these relationships would likewise cause significant harm to the Debtors. For example, there are only a few sand removal specialists who can remove the sand from the Debtors facilities at a reasonable price. This is because some sand removal companies are able to sell this sand to third parties (as opposed to merely dumping the sand in landfills) thereby reducing the costs.

C. Maintenance and Repair Supplies

22. The Debtors are required to purchase a variety of maintenance items, including repair and replacement parts for use in equipment, that are essential to the Debtors' operations.

23. The Critical Vendors that supply the Debtors with repair and replacement parts for their machinery are typically the only manufacturers that supply the needed parts. Frequently, this results from the fact that there may only be a sole supplier of a particular type of equipment utilized by the Debtors. Accordingly, when that piece of equipment needs replacement parts, those parts may only be obtained by the original equipment supplier. In some

instances, the repair and replacement parts are patented by the supplier, thereby ensuring that they are the single source supplier of those items.

24. If the Debtors were unable to obtain the repair and replacement parts needed for their equipment, it could result in a halt of production at the Debtors' facilities, which would result in significant cost to the Debtors.

D. Tooling Suppliers

25. The Debtors must purchase a variety of equipment and tooling needed for the operation of their production facilities.

26. Some of the tooling needed by the Debtors is available only from a limited number of suppliers or is custom made for the Debtors. As the Debtors are engaged in a very specialized business, there is likewise a limited number of specialized suppliers who can supply the Debtors with tooling. If the Debtors were unable to utilize certain tooling suppliers, there would be no alternate suppliers available to supply the Debtors with tooling needed to continue production at their facilities. Even if the tooling could be obtained from other suppliers, those suppliers would be unable to supply the Debtors within a reasonable time and/or on as beneficial terms as those provided by their current tooling suppliers.

27. Should the Debtors be unable to obtain tooling from the Critical Vendors, it would likely result in an inability to continue production operations thereby leading to a costly shutdown of the Debtors' production facilities.

BASIS FOR SEALING CRITICAL VENDOR LIST

28. Additionally, the names of the Debtors' Critical Vendors is confidential commercial information. If this information was disclosed, then the Debtors' competitors would

have a roadmap of the Debtors' operations, which could significantly harm the Debtors' competitiveness.

Dated: 9/15/2004

By: Larry G. Tackett
Larry Tackett

Sworn to and subscribed before me
this 18th day of September, 2004.

Notary Public 12-28-04

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:	)	
	)	**Chapter 11**
CITATION CORPORATION, et al.,[1]	)	
	)	**Case No. __________________**
Debtors.	)	

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OF CERTAIN CRITICAL TRADE VENDORS

This matter came to be heard upon the motion (the "Motion") of Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), pursuant to §§ 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") for authorization to pay, in the Debtors' sole discretion through reasonable exercise of their business judgment, the prepetition claims of certain critical vendors that are essential to the uninterrupted functioning of the Debtors' business operations (the "Critical Vendors," whose prepetition claims shall be identified as the "Critical Vendor Claims"). Upon consideration of the Affidavits of Larry Tackett and Charles P. Bloome, each filed on the

[1] In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) (Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries Ltd., and (xxiii) MFC Liquidating Company, Ltd.

Petition Date; the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; due notice of the Motion having been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of the Internal Revenue Service for the Northern District of Alabama; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; upon the Motion and all of the proceedings before this Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Debtors are authorized to pay the Critical Vendor Claims, up to $20 million in the aggregate, as determined by the Debtors in their sole discretion (subject to the conditions of the Debtors' postpetition financing arrangements) to continue receiving the vital goods and services provided by the Critical Vendors; and it is further

ORDERED that the Debtors condition the payment of Critical Vendor Claims on the agreement of individual Critical Vendors to continue supplying goods and services to the Debtors on trade terms that are as favorable or more favorable than those upon which such Critical Vendor provided goods and/or services to the Debtors prior to the Petition Date; and it is further

ORDERED that the Debtors reserve the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim; and it is further

ORDERED that the Debtors shall disclose such payments in their monthly operating report, including a description of the payments made and the reason for each payment; and it is further

ORDERED that as a condition to paying any Critical Vendor, the Debtors must (a) send a letter, substantially in the same form as that attached to the Motion as Exhibit "A," to the Critical Vendors along with a copy of this Order and the letter be executed and returned to the Debtors, and (b) that the check used to pay the holder of a Critical Vendor's claim contain a legend substantially in the following form:

> By accepting this check, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the Northern District of Alabama, dated ______, 2004, in the Company's Chapter 11 Consolidated Case, Case No _______, entitled "Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Authorizing Payment of Prepetition Claims of Certain Critical Trade Vendors" and submits to the jurisdiction of that Court for enforcement thereof.

ORDERED that nothing in this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of a Critical Vendor, whether paid or unpaid, under applicable nonbankruptcy law; and it is further

ORDERED that, if a Critical Vendor at any later time refuses to supply goods and/or services to the Debtors on trade terms that are as favorable or more favorable than those upon which such Critical Vendor provided goods and/or services to the Debtors prior to the Petition Date following receipt of payment on its Critical Vendor Claim, the Debtors are authorized to, in their discretion and without further order of the Court, declare that provisional payments made to Critical Vendors on account of Critical Vendor Claims be deemed to have been in payment of then outstanding postpetition claims of such vendors without further order of the Court or action by any person or entity. In the event that such occurs, the relevant Critical Vendor shall then immediately repay to the Debtors any payment made to it on account of its Critical Vendor

Claims to the extent that payments on account of such Critical Vendor Claims exceed the postpetition claims of such Critical Vendors then outstanding without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust find claims, or otherwise and it is further

ORDERED that, those Critical Vendors that assert or may assert any mechanics' liens, possessory liens, or other similar State law trade liens ("Trade Liens") on the Debtors' property need not comply with any of the terms and conditions set forth in this Order, except for those in this paragraph. The Critical Vendor Claim of any Critical Vendor who asserts or who may assert a Trade Lien on the Debtors' property may be paid immediately in exchange for such Critical Vendor (i) agreeing, to the extent such Critical Vendor has not previously perfected its interest in the Debtors' property, to forbear from pursuing perfection; (ii) releasing the Trade Lien; and (iii) releasing, to the extent such Critical Vendor is in possession of the Debtors' property, the Debtors' property; provided that payments in respect of Critical Vendor Claims made to Critical Vendors who assert or who may asserts Trade Liens shall not exceed $1 million in the aggregate (which limit is included in the $20 million aggregate limit for all Critical Vendor Claims). To the extent that any payment of a Critical Vendor Claim of a Critical Vendor who asserts or who may assert a Trade Lien is made that would exceed the $1 million aggregate limit, such Critical Vendor must comply with all terms and conditions set forth in this Order; and it is further

ORDERED that the banks and financial institutions that process, honor and pay any and all checks on account of obligations to be paid pursuant to this Order are authorized to do so and may rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

Dated this the ____ day of ____________ 2004.

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United States Bankruptcy Judge